620. It gives the trustee in bankruptcy power over property in the bankrupt's hands to which another has title by virtue of a private agreement with the bankrupt. *In re Hammond*, 26 Am. B. R. 336. Section 70 *a* of the original act gives the trustee the bankrupt's title to rights of action arising upon contract. The amended section 47 *a* however speaks of giving a lien, and it would be anomalous for the trustee to have a lien on claims to which he already has title. Nor is there any specific sum in a contract debtor's hands to which a lien could attach. On its face, therefore, the amendment could not be intended to apply to the principal case. The trustee in bankruptcy here had title to the claim, and if the materialman is to prevail, it must be on the ground that he had already acquired a valid lien under the state law, good against the trustee, although not completely perfected before bankruptcy. *Crane Co.* v. *Pneumatic Signal Co.*, 94 App. Div. (N. Y.) 53; *In re Huston*, 7 Am. B. R. 92. *Cf. In re Roeber*, 121 Fed. 449.

BANKS AND BANKING — COLLECTIONS — LIABILITY FOR NEGLIGENCE OF CORRESPONDENT BANK. — The A. Bank gave a note, of which it was the indorsee, to the B. Bank for collection, under an agreement that the latter should only be responsible for negligence in choosing its correspondents. The B. Bank forwarded to the C. Bank under a similar agreement. The C. Bank forwarded to the D. Bank, which in turn forwarded to the E. Bank, neither of these banks making any reservation as to liability. Through the negligence of the E. Bank in presenting the note for payment, the indorser was released. The maker of the note was insolvent. The A. Bank now sues the D. Bank. *Held*, that it can recover. *McBride* v. *Illinois National Bank*, 163 App. Div. (N. Y.) 417.

New York has adopted the view of many other American courts that in the absence of special agreement a depositary bank is liable for the default or negligence of its correspondents. *National Revere Bank* v. *National Bank of Republic*, 172 N. Y. 102, 64 N. E. 799; *St. Nicholas Bank* v. *State National Bank*, 128 N. Y. 46, 27 N. E. 849. *Contra, Wilson* v. *Carlinville National Bank*, 187 Ill. 222, 58 N. E. 250. Under this rule, however, in a chain of collecting banks, only the depositary bank is directly liable to the depositor for the acts of its correspondents, for the latter are regarded as the agents not of the depositor, but of the depositary bank. *Montgomery County Bank* v. *Albany City Bank*, 7 N. Y. 459, 464. Nor will a special agreement protecting the depositary bank, according to the first appeal of the principal case, thrust this direct liability upon all the subsequent banks. *McBride* v. *Illinois National Bank*, 138 App. Div. 339, 121 N. Y. Supp. 1041. See 23 HARV. L. REV. 639. This liability for the acts of the correspondent banks, the second appeal now adds, devolves upon the first bank in the chain which does not protect itself by special reservation. The theory appears to be that the agreement constitutes the depositary bank, and each succeeding correspondent similarly protected, a mere agent to employ some other bank as collector. It seems a very forced construction, however, to hold that the reservation goes beyond relieving the depositary bank from the rule of *respondeat superior*, and affects the liability of the correspondent banks. Nor can the reservation be construed to do more than release the depositary bank from an implied warranty of its correspondents, if that be taken as the basis of its liability. Under the rule prevailing in many other jurisdictions only the ultimate correspondent bank would be liable anyway, and the special agreement protecting the depositary bank would therefore be immaterial. *Farmer's Bank of Virginia* v. *Owen*, 5 Cranch C. C. 504.

BANKS AND BANKING — COLLECTIONS — NATURE OF LIABITITY OF DEPOSITARY BANK. — The plaintiff deposited at the defendant bank a check on

another bank drawn to his order and indorsed in blank. The defendant placed the full amount to the plaintiff's credit subject to check and the plaintiff drew on it. A month later the defendant sought to charge the amount to the plaintiff's account, on the ground that the check had been lost in the mail. *Held*, that the bank cannot charge it back. *Spooner* v. *Bank of Donalsonville*, 82 S. E. 625 (Ga.).

The nature of the liability of a bank in which a check indorsed in blank is deposited for collection properly depends upon the intent of the parties. Presumptively, however, the transaction should not be regarded as a sale, but rather as an agency, or more accurately, as a trust, since legal title passes by the indorsement. *Scott* v. *Ocean Bank*, 23 N. Y. 289. See 18 HARV. L. REV. 300. Nor is the additional fact that the depositor is allowed to draw against the check at once conclusive of a sale. *Moors* v. *Goddard*, 147 Mass. 287. *Contra*, *Hoffman* v. *First National Bank*, 46 N. J. L. 604. See 13 HARV. L. REV. 416. Under this view, the bank should not be liable for the amount of the check unless itself at fault. Many cases, however, agree with the principal case, and hold the transaction presumptively a sale, at least when credit is given the depositor. *Metropolitan National Bank* v. *Loyd*, 90 N. Y. 530; *Burton* v. *United States*, 196 U. S. 283; *Aebi* v. *Bank of Evansville*, 124 Wis. 73, 102 N. W. 329. A question then arises as to the effect of an arrangement between the parties that the bank may charge back if the check proves uncollectible. Here, too, the courts differ; but many hold that the result is to make the bank a mere agent, and not a debtor. *Fanset* v. *Garden City State Bank*, 24 S. D. 248, 123 N. W. 686; *Davis* v. *Butters Lumber Co.*, 130 N. C. 174, 41 S. E. 95. Properly, however, such an arrangement should not negative what would otherwise be regarded as a sale, for it simply provides a short cut for enforcing the indorsee's rights against the indorser. *Burton* v. *United States*, *supra*; *Aebi* v. *Bank of Evansville*, *supra*. On that construction, an arrangement for charging back in the principal case would leave the transaction still a sale, but the case would not even then be a proper one for the bank to charge the depositor as its indorser.

CARRIERS — PASSENGERS: EJECTION OF PASSENGERS — REFUSAL TO PAY UNLAWFUL FARE. — An electric railway company interpreted the two franchises under which it was operating as authorizing a fare of fifteen cents between two points. The plaintiff, upon refusing to pay more than ten cents to ride this distance, was ejected from a car and sued the company for assault and battery. The court found that upon a proper construction of the franchises ten cents was the maximum lawful fare. *Held*, that the plaintiff may recover. *Raynor* v. *New York & L. I. Traction Co.*, 86 Misc. (N. Y.) 201, 149 N. Y. Supp. 151 (Nassau County Ct.).

At present the authorities tend to decide in favor of the passenger the old conflict concerning a carrier's liability for ejecting a passenger whose failure to produce a proper ticket is the fault of the carrier's agents. See 20 HARV. L. REV. 137. Thus a passenger who has received an invalid ticket or an improper street car transfer may generally recover for his consequent ejection. *New York, L. E. & W. R. Co.* v. *Winter's Adm'r*, 143 U. S. 60; *Murdock* v. *Boston & Albany R. Co.*, 137 Mass. 293. *Contra*, *Norton* v. *Consolidated Ry. Co.*, 79 Conn. 109, 63 Atl. 1087. *Cf. Shelton* v. *Erie R. Co.*, 73 N. J. L. 558, 66 Atl. 403. Again, the weight of authority is that a passenger who has been denied an opportunity to buy a ticket may recover if ejected for refusing to pay the higher cash fare. *Forsee* v. *Alabama G. S. R. Co.*, 63 Miss. 66; *Ammons* v. *Southern Ry. Co.*, 138 N. C. 555, 51 S. E. 127. *Contra*, *Monnier* v. *New York Central & H. R. R. Co.*, 175 N. Y. 281, 67 N. E. 569. In spite of the carrier's primary fault, the real necessity for a regulation requiring the production of tickets, and the possible application of the rule against avoidable damages,